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SUBJECT: EMBASSY IPR ROUNDTABLE HIGHLIGHTS
OPPORTUNITIES FOR COOPERATION

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SUMMARY

1. (SBU) At an Embassy-sponsored roundtable discussion on intellectual property rights (IPR) on May 11, private sector participants acknowledged a heightened level of engagement by the GRP, but expressed concern over weak enforcement. Many industries are implementing targeted strategies to improve IPR protection including public-private partnerships with the GRP and public education campaigns. Intellectual Property Office Director General Adrian Cristobal assured participants of the GRP's continued commitment to a strong IP system as demonstrated by ongoing work under its internal action plan. The Ambassador congratulated the GRP for recent progress but underscored the need for further work. She encouraged stronger teamwork among the USG, private sector, and GRP agencies to advance IPR enforcement and initiatives to strengthen protection and appreciation of benefits of IPR for the Philippine economy. END SUMMARY.

EMBASSY HOSTS ROUNDTABLE DISCUSSION ON IPR

2. (U) The Embassy held its third "Roundtable on Intellectual Property Rights" (IPR) to promote positive initiatives to improve IPR protection in the Philippines, which involved about 70 participants from the private sector, other diplomatic missions, the GRP, and the USG. The program was divided into two parts. During the first part, USG and private sector participants discussed the state of IPR protection in the Philippines since its movement from the Special 301 Priority Watch List to the Watch List in February 2006. The Ambassador opened the second part of the program, for which the GRP joined the Embassy and private sector participants in the roundtable. Intellectual Property Office Director General Adrian Cristobal delivered a presentation on GRP accomplishments and strategies for improving IPR protection, which was followed by general discussion. Other GRP participants

included officials from the Justice Department, Customs, the National Police, and the Supreme Court, as well as the Chief State Prosecutor, Deputy Prosecutor, Optical Media Board Chairman Edu Manzano, and a well-known judge, Antonio Eugenio, who has an extensive background in IPR cases.

GRP ENERGIZED, BUT ENFORCEMENT REMAINS A CHALLENGE

13. (SBU) Industry participants acknowledged progress, but pointed out that enforcement remains a major problem because of lengthy judicial delays, lack of transparency, and corruption. Levi Strauss Company cited a decade-old case that the GRP just now will begin prosecuting since the courts over the last ten years have had to address interlocutory appeals. Many noted that prosecution of IPR violators lacks transparency: judges often quash search warrants without explanation and issue rulings inconsistent with other cases. Venue is another issue, as cases are often tried in provincial courts, which may be susceptible to local influence. Participants also expressed concern that the judicial process and sentencing provisions do not serve as effective deterrents to IPR violators.

14. (SBU) Participants said that GRP support for IPR protection has been lukewarm, particularly with regard to copyright protection. Participants reported mixed results in dealing with the Intellectual Property Office (IPO), the Optical Media Board (OMB), and other agencies. Participants commented that most senators and congressmen appear to recognize the value of IP

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rights, but are often subject to political pressure by interest groups. Representatives of the Pharmaceutical and Healthcare Association of the Philippines (PHAP) said that the GRP has been largely unresponsive to its key issues, such as Senate Bill 2139, otherwise known as the Roxas Bill (ref A) and the implementing rules and regulations to Executive Order 51, or the "Milk Code" (ref B). Microsoft reported tepid local business support for IPR enforcement efforts due to fear of negative political ramifications. However, some participants, including Microsoft and the Cable and Satellite Broadcast Association of America (CASBAA), successfully engaged the IPO on programs where they collaborate and provide funding and/or technical assistance to GRP agencies.

DIALOGUE FOCUSES ON STRATEGIES FOR SUCCESS

15. (U) Industry presenters highlighted strategies for improving IPR in the Philippines, which include initiatives on enforcement, public education, and greater cooperation with the GRP. CASBAA's anti-piracy program is aimed at disrupting illegal programming through judicial and police activities. Beginning in September 2005, CASBAA financed surprise raids on four cable companies and repeat raids on two. All companies quickly resumed broadcasting, but one company stopped airing illegal programming. CASBAA noted that many in the cable industry took notice and CASBAA hopes the raids serve as a deterrent to other would-be pirates. CASBAA is also filing criminal and administrative complaints against cable pirates, acknowledging that while the judicial process is arduous, it is also disruptive to the pirating company. CASBAA commenced a public relations campaign in October 2005 aimed to persuade companies using illegal programming to "go legit," to create a sense of public rejection of

piracy, and to publicize enforcement actions through newspaper articles and television commercials. CASBAA has proposed a joint "Cable Piracy Summit" with the GRP. CASBAA said that the Mission's support has been essential to their efforts.

¶6. (U) The heart of Microsoft's IP approach is to build a "strong IP ecosystem" by focusing on development of the local software industry in order to create local demand for IPR protection as well as opportunities for economic growth. One example is the "Fly High 2010" campaign, a public-private collaborative growth plan for the Philippine software industry, which includes IPR protection as a key strategy. Microsoft also targets enforcement efforts both independently and through the Business Software Alliance (BSA). In August 2005, BSA collaborated with the National Bureau of Investigation (NBI), the OMB, and the Philippine National Police (PNP) on a "Countdown-Crackdown" campaign, which targeted law enforcement raids on software pirates. BSA also spearheaded licensing compliance efforts with less than desired results. Microsoft noted that collaboration with the GRP can improve the net result; Countdown-Crackdown resulted in a much higher magnitude of compliance, which was sustained through the first quarter of 2006.

¶7. (U) Levi Strauss Company's self-described aggressive brand protection strategy includes trademark registration, enforcement, lobbying, and training and education. Through its "Show No Mercy" program, the company pledged to make infringement as economically unfeasible as possible through relentless enforcement. Levi Strauss actively lobbies the GRP, including IPO, NBI, Bureau of Customs (BOC), and the Department of Justice (DOJ) and is participating in many anti-counterfeiting coalitions. In training and education, Levi Strauss conducted brand protection workshops with Customs familiarizing officials with trademarks, designs, and methods for identifying counterfeits. Levi Strauss will be embarking on a project with IPO in October 2006 to increase brand awareness and engage in further education through participation in public events and advertisements.

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¶8. (SBU) With the RP's removal from the Priority Watch List, industry participants stressed that measures to build and ensure transparency within the RP judicial system are imperative since this is where enforcement of IP laws tends to break down. Embassy officials encouraged the industries to identify both alleged infringers, and judges and prosecutors who allegedly enable them. That information, if deemed credible, may now be included in the Embassy's consular lookout system. While such lookouts may not necessarily result in a visa denial, the information may be a useful tool for consular officers.

¶9. (U) Cisco Systems described tactics that have been successful in Singapore, including raids on infringing companies, seizure of assets of these companies and their principal officers, and use of funds from these assets for children's programs. Embassy officers encouraged private sector participants to share best practices from ASEAN countries with the GRP. Participants agreed that creating IP courts would help eliminate the current practice of trying cases in provincial courts.

¶10. (U) In her remarks, the Ambassador underscored the common economic interests of the U.S. and the RP in achieving stronger IPR protection. She congratulated the GRP for recent improvements and initiatives that

led to its removal from the Priority Watch List but noted that there is still work to be done. The Ambassador encouraged the private sector to continue working with both the U.S. and the Philippine governments. The Ambassador noted that effective teamwork would strengthen enforcement critical to new investment, entrepreneurship, and economic growth.

GRP LOOKS TO SUSTAIN IMPROVEMENTS IN IP REGIME

¶11. (U) IPO Director General Adrian Cristobal's presentation focused on defining achievements and outlined strategies for sustaining those improvements in order to strengthen the RP's intellectual property system. Cristobal emphasized that there is political will to improve IPR protection at the highest levels of the GRP, specifically citing President Arroyo's recent policy statements linking IPR protection to the GRP's war against poverty and tying IP to the RP national interest. Cristobal told participants that creative strategies to maximize resources are necessary, as resources for IPR enforcement are shared with other enforcement priorities. He suggested that IP owners look at increased investment in public education and brand protection.

¶12. (U) Cristobal cited a number of recent policy directives and initiatives that further clarify responsibilities and strengthen government agencies in charge of IPR enforcement. He said that there is an increased awareness of IP issues in the general public and within certain public sectors. Cristobal's highlighted successes: 28 convictions for IPR violators between 2004 and the first quarter of 2006; targeted training for judges and prosecutors on IPR; a public outreach campaign; and public-private partnerships with various companies and industry associations. IPO's ongoing goals include creating an IP Academy, expanding cooperation with IPR stakeholders, and building public awareness. Cristobal said that the GRP's continued work on key IPR initiatives will ensure further improvements in the Philippines' IP system.

¶13. (SBU) In a follow-on discussion, Cristobal detailed plans for the IPO's unclassified, web-based IPR enforcement database, which is expected to be operational in June 2006. Case details, including information on prosecutors, judges, and general case status, will be included in the database. (Note: The website is already partially constructed. However, it may take several months before it is fully operational due to interagency procedural concerns that need to be addressed. End Note.)

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¶14. (U) With respect to pharmaceutical patents, Cristobal reassured the group that the Philippines protects all patents for the full duration of those patents, as provided under the law. On illegal importation of IPR infringing goods, Cristobal said that the Bureau of Customs recently signed a Memorandum of Understanding with China, pledging mutual cooperation and detailing specific procedures for handling such goods. The GRP noted difficulties in coordinating with IP rights holders on suspected infringement cases. The IPO is developing a database of IP owners, but requires assistance in determining an efficient mechanism for contacting them.

COMMENTS

¶15. (SBU) The general tone of the discussion was positive and forward-looking. While many private sector representatives acknowledged a heightened level of GRP attention and progress since the 301 Priority Watch List decision in February 2005, they expressed concern about ongoing problems, especially enforcement. Several participants commented that the Embassy roundtable assured them that the USG is maintaining pressure on the GRP. Cristobal's presentation also conveyed that the GRP is looking to build on improvements it has already made and not rest on its laurels. Many private sector participants said that the event was helpful and constructive, and suggested that the Embassy also facilitate smaller roundtables to focus on specific issues.

¶16. (SBU) By having industries focus on successful strategies for engaging the GRP, Post hoped to encourage a sharing of ideas and further collaboration across industry sectors and with GRP agencies. Those industries and companies who have clearly defined strategies that includes positive cooperation with the GRP, such as CASBAA, Levi Strauss, and Microsoft, express more optimism about the prospects for improved IPR protection within their industry sector. A common IPO complaint is that some of the most vocal critics of the quality of IP protection in the Philippines, such as the International Intellectual Property Alliance (IIPA) and the Association of American Publishers, have not engaged the GRP on any level. Private sector involvement is an important component of Post's strategy to improve IPR. Roundtables are a useful tool for defining problems, encouraging cooperation and reinforcing GRP commitments to progress.

¶17. (SBU) The GRP remains highly engaged on IPR and has a defined strategy for moving forward in 2007. GRP attendance at Post's roundtables have been high, but key enforcement agencies have not consistently attended. The unprecedented participation of several senior Department of Justice officials, including the Chief State Prosecutor, the Assistant State Prosecutor, and a senior judge, was particularly encouraging.